

1 NICHOLAS J. SANTORO, ESQ.
2 Nevada Bar No. 0532
3 nsantoro@santoronevada.com
4 JASON D. SMITH, ESQ.
5 Nevada Bar No. 9691
6 jsmith@santoronevada.com
7 SANTORO WHITMIRE
8 10100 W. Charleston Blvd., Suite 250
9 Las Vegas, Nevada 89135
10 Telephone: 702/948-8771
11 Facsimile: 702/948-8773

12 Jonathan Moskin
13 Akiva Cohen
14 Ramy Hanna
15 Adam Pence
16 FOLEY & LARDNER LLP
17 90 Park Avenue
18 New York, New York 10016-1314
19 P: (212) 682-7474
20 F: (212) 687-2329
21 Email: jmoskin@foley.com
(admitted *pro hac vice*)

22 *Attorneys for Defendant Marks Studios, LLC*

23 **UNITED STATES DISTRICT COURT**

24 **DISTRICT OF NEVADA**

25 KONAMI GAMING, INC., a Nevada
26 corporation,

27 Plaintiff,

28 v.

MARKS STUDIOS, LLC d/b/a Gimmie
Games, a Georgia limited liability company,

Defendant.

CASE NO.: 2:14-cv-01485-JAD-CWH

Honorable Jennifer A. Dorsey
Magistrate Judge Carl W. Hoffman

**STIPULATION AND [PROPOSED]
ORDER TO MODIFY SCHEDULING
ORDER
(FIRST REQUEST)**

Pursuant to Local Rules 6-1 and 26-4. Plaintiff Konami Gaming, Inc. (“Konami” or “Plaintiff”) and Defendant Marks Studios, LLC d/b/a Gimmie Games (“Marks Studios” or “Defendant”) hereby stipulate as follows:

WHEREAS, the parties to this action filed a proposed joint Discovery Plan and Scheduling Order (the “Scheduling Order”) on December 30, 2014, which included a *Markman* schedule with proposed dates, pursuant to Local rules 16.1-6 to 16.1-18 (*docket no. 24*);

1 **WHEREAS**, the Scheduling Order provided that Plaintiff Konami Gaming, Inc.
2 ("Konami") would serve its Disclosure of Asserted Claims and Infringement Contentions
3 ("Claims and Contentions"), along with supporting documents, by January 14, 2015 (*docket no.*
4 *24.*);

5 **WHEREAS**, the Court so ordered the Scheduling Order on January 27, 2015 (*docket no.*
6 *31.*);

7 **WHEREAS**, to date, the Plaintiff and Defendants have made their Initial Disclosures
8 pursuant to Federal Rule of Civil Procedure 26(a)(1) and have filed the Stipulated Protective
9 Order required under Local Rule 16.1-4;

10 **WHEREAS**, pursuant to the Scheduling Order, discovery is partially stayed until the
11 Court issues a *Markman* order on claim construction. Until that time, the only permitted
12 discovery: (a) the substantive disclosures included in section C ("Markman schedule") of the
13 Scheduling Order; (b) Defendant's deposition of the inventor(s), (c) Plaintiff's deposition of a
14 technical person knowledgeable concerning operation of Defendant's games, (d) Plaintiff's and
15 Defendant's discovery relating to claim construction and the validity of the patents in suit, and
16 (e) expert discovery;

17 **WHEREAS**, on January 14, 2015, Plaintiff made its Disclosure of Asserted Claims and
18 Infringement Contentions pursuant to LR 16.1-6, Defendant is challenging the sufficiency of
19 certain disclosures with Local Rule 16.1-6(a) and (d), and the production of documents under
20 Local Rule 16.1-7,;

21 **WHEREAS**, while Plaintiff disagrees with Defendant's challenges, in the interest of
22 judicial economy and for convenience of the Parties Plaintiff has agreed to supplement its
23 Disclosure of Asserted Claims and Infringement Contentions pursuant to LR 16.1-6 and further
24 to produce the documents under Local Rule 16.1-7, for which has taken additional time;

25 **WHEREAS**, the parties have agreed to amend the *Markman* schedule to provide at least
26 an additional four weeks from the current schedule for Defendant to file its Initial Disclosure of
27 Non-Infringement, Invalidity and Unenforceability Contentions due to the delays in resolving the
28 disclosure issues and to allow Defendant sufficient time to respond;

1 **WHEREAS**, this is the parties' first request to modify the Scheduling Order.

2 **IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned
 3 counsel for the named parties hereto, that the *Markman* schedule in the Scheduling Order will be
 4 amended as follows solely as to the dates for (1) Disclosure of Asserted Claims and Infringement
 5 Contentions - LR 16.1-6, (2) Initial Disclosure of Non-Infringement, Invalidity and
 6 Unenforceability Contentions - LR 16.1-8, and (3) Response to Initial Non-Infringement,
 7 Invalidity and Unenforceability Contentions - LR 16.1-10:

Event	Basis	Proposed Date
Disclosure of Asserted Claims and Infringement Contentions	LR 16.1-6	January 14, 2015 Supplemental Disclosure Date: February 9, 2015
Initial Disclosure of Non-Infringement, Invalidity and Unenforceability Contentions	LR 16.1-8	March 26, 2015
Response to Initial Non-Infringement, Invalidity and Unenforceability Contentions	LR 16.1-10	April 9, 2015
Exchange of Proposed Terms for Claim Construction	LR 16.1-13	April 28, 2015
Exchange of Preliminary Claim Construction and Extrinsic Evidence	LR 16.1-14	May 28, 2015
Parties to Meet and Confer regarding terms requiring construction and proposed meaning of the terms	LR 16.1-14	June 1-8, 2015
Joint Claim Construction Statement	LR 16.1-15	June 5, 2015
Opening Claim Construction Brief	LR 16.1-16	July 13, 2015
Responsive Claim Construction Brief	LR 16.1-16	July 27, 2015
Reply Claim Construction Brief	LR 16.1-16	August 3, 2015

24 **IT IS FURTHER STIPULATED AND AGREED** that in no event shall the return date
 25 for Defendant's Initial Disclosure of Non-Infringement, Invalidity and Unenforceability
 26 Contentions be fewer than the 45 days after completed service of documents in support of
 27 Konami's Claims and Contentions, as afforded under LR 16.1-8;

1 **IT IS FURTHER STIPULATED AND AGREED** that the Discovery plan remains
2 unchanged and that this Stipulation is made in good faith and not for the purpose of delay.

3 **IT IS SO STIPULATED THROUGH COUNSEL OF RECORD,**

4 Dated: February 6, 2015

Dated: February 6, 2015

5 By: /s/ Nicholas J. Santoro

Nicholas J. Santoro
6 Nevada Bar No. 532
7 Jason D. Smith
Nevada Bar No. 9691
8 SANTORO WHITMIRE
10100 West Charleston Blvd., Suite 250
9 Las Vegas, Nevada 89135
P: (702) 948-8771
F: (702) 948-8773
Email: nsantoro@santoronevada.com
Email: jsmith@santoronevada.com

By: /s/ Kimberly P. Stein

Kimberly P. Stein
Nevada Bar No. 8675
HOWARD & HOWARD ATTORNEYS
Wells Fargo Tower, Suite 1000
3800 Howard Hughes Parkway
Las Vegas, Nevada 89169
P: (702) 257-1483
F: (702) 567-1568
Email: KStein@howardandhoward.com

and

12 Jonathan Moskin
13 Akiva Cohen
14 Ramy Hanna
15 Adam Pence
FOLEY & LARDNER LLP
90 Park Avenue
16 New York, New York 10016-1314
P: (212) 682-7474
F: (212) 687-2329
Email: jmoskin@foley.com
(admitted pro hac vice)

Patrick M. McCarthy
Michigan Bar No. P49100
HOWARD & HOWARD ATTORNEYS
One North Main Building
101 North Main Street
Ann Arbor, Michigan 48104-1475
P: (734) 222-1483
F: (732) 761-5957
Email: PMcCarthy@howardandhoward.com
(admitted pro hac vice)

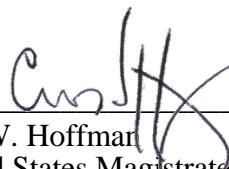
19 *Attorneys for Defendant Marks Studios, LLC*

Attorneys for Plaintiff Konami Gaming, Inc.

21 **ORDER**

22 **PURSUANT TO THE STIPULATION, IT IS SO ORDERED:**

23 Dated: February 9, 2015

24
25
26 
Carl W. Hoffman
United States Magistrate Judge